

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN H. SANTOS,)	CASE NO. C16-0434RSM
)	
Plaintiff,)	
)	ORDER GRANTING PLAINTIFF'S
v.)	MOTION TO STAY AND STRIKING
)	DEFENDANT U.S. BANK NATIONAL'S
U.S. BANK NATIONAL ASSOCIATION,)	MOTION TO COMPEL
<i>et al.</i> ,)	
)	
Defendants.)	

I. INTRODUCTION

This matter comes before the Court on Defendant U.S. Bank National Association's ("U.S. Bank") Motion to Compel Discovery (Dkt. #16) and Plaintiff's Motion for Stay of Proceedings (Dkt. #24). The Court has reviewed both motions and their attendant briefing. For the reasons set forth herein, the Court now GRANTS Plaintiff's motion, stays this matter, and STRIKES Defendant's motion to compel subject to its renewal upon expiration of the stay.

II. BACKGROUND

Plaintiff, Brian Santos, initially filed his Complaint for Damages in King County Superior Court. Dkt. #4. Defendants removed the action to this Court on March 25, 2016. Dkt. #1. Plaintiff alleges that:

3.2 At all times material and relevant hereto [he] was an active duty member of the United States Air Force.

1 3.3 At all times material and relevant hereto, [his] then-wife was
2 also an active duty member of the United States Air Force.

3 3.4 Defendant US BANCORP, doing business as US Bank and US
4 Bank Home Mortgage, holds the mortgage to [his] home located at 19007
5 SE 260th Street in Covington, King County, Washington.

6 3.5 On or about September 1, 2012, [he] spoke with Jordan Clark of
7 Defendant US BANCORP, d/b/a US Bank, regarding his active duty status
8 to ensure his home would be protected while he was deployed.

9 3.6 On said occasion, Jordan Clark assured [him] that he was
10 protected under the Servicemembers Civil Relief Act (SCRA) and no
11 negative action would be taken against him by the bank for any missed
12 mortgage payments.

13 3.7 On or about September 11, 2012, Jill Payne, E-mail
14 Representative of the Special Loans Department of Defendant US
15 BANCORP emailed [him] and advised him that the SCRA did apply to his
16 mortgage on the subject property and should he become delinquent on his
17 mortgage payments, the bank could not take action against him.

18 3.8 On or about September 16, 2012, [he] responded to Jill Payne's
19 email seeking further confirmation that he was fully enrolled in the program
20 ensuring his protection under the SCRA and advised Ms. Payne that Jordan
21 Clark had previously assured him that US BANCORP, d/b/a US Bank,
22 would fully exonerate him for any missed mortgage payments and asked
23 Ms. Payne for confirmation this statement by Jordan Clark was indeed true.

24 3.9 On or about September 17, 2012, Jill Payne responded to [his]
25 email and confirmed his accounts with US Bank were "set up in accordance
26 with the Servicemembers Civil Relief Act through [his] September 1, 2014,
27 payment." She went on to state, ". . . you will not accrue any late charges
28 through this date and we will not report you to the credit bureaus through
November 28, 2013." Ms. Payne further confirmed that "[d]uring [his]
period of active duty and for nine months thereafter, [he would] not be in
danger of foreclosure..." and advised him that "[a]s of today, neither loan is
being reviewed for foreclosure, so ... [he was] not going to lose [his] home."

 3.10 On or about November 27, 2012, Defendant US BANCORP, by
and through Jessica Brazier, Special Loans Specials with US Bank's Special
Loans Department, sent [him] a letter again confirming his protection under
the SCRA based upon his active duty status in the US military.

 3.11 Defendant US BANCORP employed Defendant SAFEGUARD
PROPERTIES to winterize Plaintiff's Covington home and, upon

1 information and belief, hired Defendant SAFEGUARD PROPERTIES to
2 perform this work less than one month after Plaintiff had received the
3 written confirmation of November 27, 2012, that he was subject to SCRA
4 protections.

5 3.12 Upon information and belief, when Defendant US BANCORP
6 hired Defendant SAFEGUARD PROPERTIES to winterize Plaintiff's
7 home, Defendant US BANCORP, by and through its duly authorized agents
8 or employees, informed Defendant SAFEGUARD PROPERTIES that
9 Plaintiff's mortgage was in default and that the subject residence was an
10 asset of the bank and therefore needed winterization to preserve said asset.

11 3.13 Defendant SAFEGUARD PROPERTIES then hired Defendant
12 QUEST PRESERVATION to perform said winterization.

13 3.14 Defendant QUEST PRESERVATION hired Bryan Anderson to
14 complete the winterization of Plaintiff's home in Covington, Washington.

15 3.15 On or about December 28, 2012, Defendant QUEST
16 PRESERVATION issued work order #115592 to Bryan Anderson to
17 winterize the subject property.

18 3.16 On or about December 29, 2012, Bryan Anderson and his sister,
19 Cheryl Anderson, entered Plaintiff's home.

20 3.17 On said occasion, Bryan Anderson replaced the front door locks
21 with a new one so that Defendant SAFEGUARD PROPERTIES would
22 have access to Plaintiff's home.

23 3.18 In the course of winterizing Plaintiff's home, Bryan and Cheryl
24 Anderson unlawfully removed personal property belong to Plaintiff and also
25 caused damage to the home itself.

26 3.19 Upon information and belief, over the course of four days,
27 Bryan Anderson removed numerous items belonging to Plaintiff.

28 3.20 In the course of winterizing Plaintiff's home and removing
Plaintiff's personal property from the residence, Bryan Anderson informed
Plaintiff's neighbors that [his] mortgage was in default and was being
repossessed by the bank.

3.21 Bryan Anderson then pawned and/or otherwise attempted to sell
the personal property he stole from Plaintiff's residence.

1 3.22 On or about December 31, 2012, Jessica Brazier again sent a
2 letter to Plaintiff advising him that the bank was issuing him a refund of a
late fee due to his protection under the SCRA.

3 3.23 On or about January 4, 2013, Bryan Anderson opened a bank
4 account with Defendant US BANCORP, via a US Bank branch, with a
check he obtained from selling Plaintiff's personal property.

5 3.24 On or about February 24, 2013, Plaintiff [], having been granted
6 a one-week leave from him [sic] deployment in Korea, arrived at the
7 Covington home and discovered his key no longer worked to unlock the
8 front door. Unable to get into his home, Plaintiff called 911, who advised
him to contact his bank.

9 3.25 Plaintiff [] contacted Defendant US BANCORP the next day,
10 February 25, 2013, and notified said Defendant, by and through its duly
11 authorized employee(s) and/or agent(s) of the violation of Defendant US
12 BANCORP'S prior guarantees that he was protected by the SCRA and also
providing notice to said Defendant that many personal items had been
stolen from his residence.

13 3.26 Upon information and belief, his file and his corresponding
14 claim for damages was transferred to Defendant US BANCORP'S Loss
15 Draft Processing Center, a division of US Bank.

16 3.27 On or about February 28, 2013 and again on or about March 1,
17 2013, Plaintiff received emails from Defendant US BANCORP'S Loss
18 Draft Processing Center, confirming receipt of his claim and advising
Plaintiff it was currently being reviewed.

19 3.28 On or about March 2 or 3, 2013, Gregg Speer, Sr., Vice
20 President of Residential Homes Default Counseling, a division of
21 Defendant US BANCORP, called Plaintiff and promised him that the bank
"would make this right" and further promised immediate financial
22 assistance to Plaintiff to offset the costs and losses Plaintiff had suffered as
a result of the wrongful pre-foreclosure actions taken by Defendant US
23 BANCORP.

24 3.29 After having admitted the pre-foreclosure actions previously
25 taken by Defendant US BANCORP were wrongful and should not have
26 occurred, Defendant US BANCORP, by and through US Bank's Residential
Mortgage Default and Management Division, sent Plaintiff another Pre-
Foreclosure Notice on or about June 19, 2013.

27 3.30 Around the time Defendant US BANCORP sent Plaintiff the
28 Pre-Foreclosure Notice in June of 2013, Plaintiff's neighbors contacted him

1 to let him know that another home preservation company had been seen on
 2 Plaintiff's property.

3 Dkt. #4, *Complaint* at ¶¶ 3.2-3.30.

4 As a result, Plaintiff has brought claims against Defendant U.S. Bank for Violation of
 5 the Consumer Protection Act and Fraud, and against all Defendants for Violation of the
 6 Servicemembers Civil Relief Act, Negligence, Negligent Infliction of Emotional Distress,
 7 Intentional Infliction of Emotional Distress, and Vicarious Liability. *Id.* at ¶¶ 4.1-10.9.

8 Discovery has been proceeding in this matter, and trial is currently set for May 30,
 9 2017. Dkt. #11. Prior to the discovery deadline of February 1, 2017, Defendants filed a motion
 10 to compel responses to written discovery and the deposition of Plaintiff. Dkt. #16. That
 11 motion was noted for consideration by the Court on January 20, 2017. *Id.*

12 Plaintiff has now filed a motion for a stay of this matter pursuant to the Servicemembers
 13 Civil Relief Act ("SCRA"), and seeks a stay until May of 2018. Dkt. #24.

14 **III. DISCUSSION**

15 **A. Motion for Stay**

16 The purpose of the SCRA "is to suspend enforcement of civil liabilities of persons in
 17 military service of the United States in order to enable such persons to devote their entire
 18 energy to the defense of the Nation." *Engstrom v. First National Bank of Eagle Lake*, 47 F.3d
 19 1459, 1462 (5th Cir. 1995). The public policy behind the Act "is to allow military personnel to
 20 fulfill their duties unhampered by obligations incurred prior to their call." *Omega Industries,*
 21 *Inc. v. Raffaele*, 894 F. Supp. 1425, 1434 (D. Nev. 1995). Further, the provisions of the Act are
 22 to be "liberally construed" and applied in a "broad spirit of gratitude towards service
 23 personnel." *Engstrom*, 47 F.3d at 1462; *Omega Industries, Inc.*, 894 F. Supp. at 1434 (citations
 24 omitted). As a result, the Court "must exercise extreme caution in withholding the protection"
 25
 26
 27
 28

1 of the Act. *Omega Industries, Inc.*, 894 F. Supp. at 1434. Nevertheless, the Act “is not to be
2 used as a sword against persons with legitimate claims,” and the Court must give “equitable
3 consideration of the rights of parties to the end that their respective interests may be properly
4 conserved.” *Engstrom*, 47 F.3d at 1462.

5 Section 522 of the SCRA “applies to any civil action in which the plaintiff or defendant
6 at the time of filing” a request for a stay under that section: “(1) is in military service or is
7 within 90 days after termination of or release from military service; and (2) has received notice
8 of the action or proceeding.” 50 App. U.S.C.A. § 522(a). There is no dispute that these
9 requirements have been met in this case.
10

11 A stay may be obtained “[a]t any stage before final judgment in a civil action or
12 proceeding” either “upon application of the servicemember” or by the Court “on its own
13 motion . . . for a period of not less than 90 days.” 50 App. U.S.C.A. § 522(b)(1). In order to
14 obtain a stay, the application must include:
15

16 (A) A letter or other communication setting forth facts stating the manner
17 in which current military duty requirements materially affect the
18 servicemember’s ability to appear and stating a date when the
19 servicemember will be available to appear.

20 (B) A letter or other communication from the servicemember’s
21 commanding officer stating that the servicemember’s current military duty
22 prevents appearance and that military leave is not authorized for the
23 servicemember at the time of the letter.

24 50 App. U.S.C.A. § 525(b).

25 In support of his motion for stay, Plaintiff has submitted a letter dated January 20, 2017,
26 from his commanding officer which states that Plaintiff’s current military assignment prevents
27 him from “appearing for trial in the Continental United States for trial beginning 12 June
28 2016,” that he does not have enough leave days accrued to participate “in these upcoming

proceedings of 30 days or more,” that he will separate from the Air Force in three years, and that he could provide a deposition in this proceeding in May of 2017. Dkt. #25, Ex. 1. In addition, he has submitted a copy of his orders stationing him in Germany, and his specific position appointment letter which states that he needs to be prepared for a potential deployment at any time. *Id.*, Exs. 2 and 3. Although the Court agrees with Defendant that there are ambiguities with the information provided, *see* Dkt. #26, and particularly with the letter from Plaintiff’s commanding officer, in an abundance of caution the Court finds that Plaintiff has satisfied the requirements of the Act and will grant a stay.¹ However, given those ambiguities, the Court will not grant a stay until May of 2018, and will grant a stay for a shorter duration as noted below.

B. Motion to Compel

Defendant U.S. Bank has filed a motion to compel discovery, asking the Court to direct Plaintiff to provide complete and verified responses to its Interrogatories, complete disclosures responsive to its Requests for Production, and to appear for his deposition before the close of discovery. Dkt. #16. The Court has reviewed the briefing by the parties related to this motion. Given that the Court has now stayed this matter, the Court will STRIKE the motion to compel at this time. However, nothing in this Order precludes Defendant from renewing its motion once the stay is lifted, either by asking the Court to re-note the existing motion or by filing an amended motion addressing anything that may have changed since the time of filing the instant motion. The Court will consider Defendant’s request for attorney’s fees at that time as well.

¹ Indeed, to prevent prejudice against an absent party, courts may grant a stay even where a servicemember does not fully satisfy both conditions enumerated in section (b)(2) of the SCRA. *See, e.g., Keane v. McMullen*, 2009 U.S. Dist. LEXIS 10389, 2009 WL 331455, *3 (N.D. Cal. Feb. 11, 2009) (granting a stay where a servicemember did not produce a letter from his commanding officer regarding his leave status because the court was sufficiently convinced that a stay was necessary to avoid undue prejudice).

1 In addition, the Court notes that the discovery deadline has now passed, with no party
2 seeking an extension of such deadline. Therefore, once the case resumes, only those case
3 deadlines that have not passed will be re-scheduled. Remaining deadlines include those for:
4 dispositive motions, 39.1 mediation, Motions in Limine, the Pretrial Order, trial briefs and
5 Proposed Findings of Fact and Conclusions of Law. Dkt. #11. With the exception of the
6 discovery at issue in Defendant's motion, no further discovery shall be taken once the stay is
7 lifted, unless otherwise ordered by the Court.
8

9 IV. CONCLUSION

10 Having reviewed Plaintiff's and Defendant's motions, the oppositions thereto and
11 replies in support thereof, along with the parties' Declarations and exhibits and the remainder
12 of the record, the Court hereby finds and ORDERS:
13

- 14 1. Plaintiff's Motion for Stay (Dkt. #24) is GRANTED. This litigation is STAYED
15 until **August 18, 2017**. If, by that date, a subsequent application for additional stay
16 is filed by Plaintiff under 50 App. U.S.C. § 522(d)(1), that application shall again
17 contain the information required under 50 App. U.S.C. § 522(b)(2), including a
18 letter or other communication from the servicemembers' commanding officer.
19
- 20 2. The current trial date and all remaining pre-trial deadline shall be removed from the
21 Court's calendar. The Clerk will issue an Amended Scheduling Order once the stay
22 is lifted in this matter.
23
- 24 3. Defendant U.S. Bank's Motion to Compel (Dkt. #16) is STRICKEN. However,
25 nothing in this Order precludes Defendant from filing a subsequent motion to
26 compel once the stay is lifted in this matter.
27
28

- 1 4. Once the stay is lifted, only those case deadlines that have not passed as of the date
2 of this Order will be re-scheduled as noted above. With the exception of the
3 discovery at issue in Defendant's motion to compel (Dkt #16), no further discovery
4 shall be taken once the stay is lifted unless otherwise ordered by the Court.

5 DATED this 14 day of February, 2017.

6
7 

8 RICARDO S. MARTINEZ
9 CHIEF UNITED STATES DISTRICT JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28